

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8824 OF 2019
(arising out of SLP(C)No.6999/2019)

MANGALAM CEMENT LIMITED

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX

Respondent(s)

WITH

Civil Appeal Nos.8825/2019, 8826/2019 and 8827/2019
(arising out of SLP(C) Nos.7920/2019, 7255/2019 & 8049/2019)

O R D E R

Delay condoned.

Leave granted.

These appeals take exception to the Judgment and order dated 19.09.2018 passed by the High Court of Judicature for Rajasthan at Jaipur in D.B. Central Excise Appeal Nos.79/2018,138/2018, 80/2018 and 81/2018 respectively.

While issuing notice in these matters on 01.04.2019, the Court observed thus:

“Relying on observations in paragraph 13 of the judgment in Commissioner of Central Excise and Service Tax Vs. Ultra Tech. Cement Limited reported in (2018) 2 SCC 721, it is contended that the petitioner has specifically argued before the Adjudicating Authorities as well as Appellate Authority as can be seen from the appeal memo at page 120 which reads thus:

“From the above discussion it is clear that the buyer’s premises are the ‘Place of Removal’. As submitted in Ground 1 above, outward transportation up to the ‘Place of removal’ qualifies as ‘Input service’. Thus in

the current case, outward transportation up to buyers premises qualifies as 'Input Service'. In view of above submission, the Appellant humbly submits that they have correctly taken the credit of service tax paid on outward freight hence the impugned order deserves to be quashed."

On this argument, it is submitted that the reported judgment has no application to the present case, but the High Court has not dealt with this contention in the proper perspective.

Issue notice, returnable within four weeks.

Dasti, in addition. Liberty to serve the Standing Counsel."

We have heard learned counsel for the parties.

Learned Counsel for the respondent(s) was at pains to persuade us to hold that the argument of the appellant is unstatable. We are not inclined to accede to this argument.

In our opinion, the High Court ought to have analyzed the relevant facts and contentions raised in the subject appeal(s) on its own merit and ought not to have disposed of the same by a general observation, as is noticed from the analysis in the impugned judgment.

Relevant portion of the impugned judgment reads as under:

"On hearing learned counsel for the parties and perusing the material on record, we find that in view of the amended definition of "input service" w.e.f.01.03.2008 as also in the light of judgment of the Supreme Court in Ultra Tech Cement Ltd.(supra), judgment of the Tribunal cannot be sustained in law and the demand is liable to be revived. However, the present matter deserves to be remanded to the Tribunal to consider the question of penalty.

In view of above discussion, present appeal deserves to succeed and is accordingly allowed. Impugned judgment dated 10.10.2017 passed by the Tribunal is

set aside. Order dated 28.09.2015 passed by the Adjudicating Authority to the extent of disallowance of CENVAT Credit on the aforementioned these aspects and interest thereon is confirmed. However, the matter is remanded back to the Tribunal for consideration of the question of penalty to decide the same after hearing both the parties in accordance with law. We make it clear that we have not expressed anything on merits on the question of penalty.”

Accordingly, we set aside the impugned judgment and restore the appeal(s) to the file of the High Court to its original number, for being considered afresh in accordance with law.

All contentions to both the parties are left open.

The appeals are disposed of accordingly. All pending applications are also disposed of. No costs.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELH
NOVEMBER 19, 2019.

ITEM NO.12

COURT NO.7

SECTION XV

Petition(s) for Special Leave to Appeal © Nos.6999/2019

(Arising out of impugned final judgment and order dated 19.09.2018 in DBCEA No.79/2018 passed by the High Court of Judicature for Rajasthan at Jaipur.)

MANGALAM CEMENT LIMITED

Petitioner(s)

VERSUS

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX

Respondent(s)

WITH

SLP(C) No.7920/2019 (XV)

SLP(C) No.7255/2019 (XV)

SLP(C) No.8049/2019 (XV)

(For admission and I.R. and I.A.No.39804/2019 - condonation of delay in refiling)

Date : 19.11.2019 These petitions were called on for hearing today.

CORAM : HON'BLE MR.JUSTICE A.M.KHANWILKAR
HON'BLE MR.JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr.Shyam Divan,Sr.Adv.
Mr.Sanjay Jhavar,Adv.
Mr.Rishabh Sancheti,Adv.
Mr.Sudipto Sircar,Adv.
Ms.Padma Priya,Adv.
Mr.Anchit Bhandari,Adv.
Mr.K.Paarivendhan,AOR

For Respondent(s) Mr.K.Radha Krishnan,Sr.Adv.
Ms.Aruna Gupta,Adv.
Ms.Nisha Bagchi,Adv.
Mr.B.Krishna Prasad,AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The Appeals are disposed of in terms of the signed order.

Pending application(s), if any, stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
COURT MASTER (NSH)

(signed order is placed on the file)